

Kāwika McKeague, OIBC Chair

Thank you for your interest in the Honolulu High-Capacity Transit Corridor Project and your letter of October 18, 2009 regarding the Project's development process and native Hawaiian burial issues. The Project has followed FTA's planning and project development process, which includes completion of an Alternatives Analysis prior to selection of a Locally Preferred Alternative by the project sponsor, which in this case is the City and County of Honolulu. Per our guidance, the NEPA scoping process, which defines the alternatives that are to be considered for the Project, including in the Section 106 and Section 4(f) processes, is completed after the selection of the Locally Preferred Alternative.

During the Alternatives Analysis, the City reviewed all available information regarding previously identified archaeological and burial resources. To have completed excavation of each of the corridors under consideration during the Alternatives Analysis process would have not only resulted in the closure of five roadways in the downtown area, it would have disturbed any native Hawaiian burials within those roadways, independent of whether the Project as finally proposed would have had any effect on the burials.

The Alternatives Analysis process was completed with public notification at several stages, including an initial scoping and with several hearings conducted by the City Council. It is FTA's understanding that no comments were received from the Oahu Island Burial Council (OIBC) about the Project at any time during the Alternatives Analysis process and that the City did provide the OIBC an informational briefing during December 2006, while the City Council was considering the Locally Preferred Alternative.

The FTA recognizes the OIBC's position that disturbance of any burials is "highly troubling" and, along with the City, agrees that minimal disturbance of areas that are likely to contain native Hawaiian burials is desirable. By following 36 CFR Part 800.4 (b)(2) *Phased identification and evaluation*, the City has minimized to potential to disturb burials, during an investigation process, that would not otherwise be disturbed during Project development. Now that *preliminary engineering* is being developed for the Project, the City should have sufficient information to begin an Archaeological Inventory Survey that is specific to areas that would be disturbed during Project construction. Also, the City may not purchase lands prior to the Record of Decision; therefore, it is limited in its ability to investigate sites that it would acquire for the Project.

Regarding Section 4(f) of the Transportation Act of 1966, in order to be considered a historic resource, which includes archaeological and burial resources, the resource must be determined eligible for listing on the National Register of Historic Places (NRHP), and must be affected by the Project.

The listing of burial places on the NRHP is addressed in National Register Bulletin Number 41, *Guidelines for Evaluating and Registering Cemeteries and Burial Places*. Un-marked burials discovered through an inventory survey or inadvertently could be

NRHP eligible under Criterion D under certain circumstances. Criterion D eligibility would apply if the burial had the potential to yield important information about the prehistory or history of a cultural group. Generally, this would only be applicable if the site would generate new information, and if the information can be yielded through investigation of the site.

The potential NRHP eligibility of burials are also addressed in the Criterion Considerations, which state that graves and cemeteries are unlikely to be considered NRHP eligible unless: 1) the grave is associated with a significant historical figure and there are no other appropriate sites directly associated with their productive life (Criterion Consideration B), or 2) the grave/cemetery derives its primary significance from its association with a person of transcendent importance, from age, from distinctive design features, or from direct association with historic events (Criterion Consideration D).

In the event native Hawaiian burials are discovered during Project development, that they are determined eligible for the NRHP, and that they cannot be avoided, then a Section 4(f) evaluation and approval, including evaluation of feasible and prudent avoidance alternatives, would be completed as outlined in 23 CFR 774.9(e).